



## **CRS Report for Congress**

# **Presidential Libraries: The Federal System and Related Legislation**

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### **Summary**

Through the National Archives and Records Administration, the federal government currently manages and maintains 12 presidential libraries. Inaugurated with the Presidential Libraries Act of 1955, these entities are privately constructed on behalf of former Presidents and, upon completion, are deeded to the federal government. Deposited within these edifices are the official records and papers of the former President, as well as documentary materials of his family and, often, his political associates. These holdings are made available for public examination in accordance with prevailing law concerning custody, official secrecy, personal privacy, and other similar restrictions. This report provides a brief overview of the federal presidential libraries system and tracks the progress of related legislation (H.R. 1254, H.R. 1255, H.R. 5811, S. 886). It will be updated as events recommend.

During the first 150 years of government under the Constitution, the management and preservation of federal records was generally neglected.<sup>1</sup> Inattentiveness to the maintenance of official papers prevailed within both the infant bureaucracy and the White House. While the Secretary of State bore responsibility for retaining copies of the most important government documents during these initial years, lesser papers without immediate administrative significance disappeared in a clutter, disintegrated, became otherwise lost, or were destroyed by design.

Within this atmosphere, departing Presidents had little choice with regard to the disposition of their records: there was no national archive to receive them, and, for reasons of etiquette, or politics, or both, there was reluctance to leave them behind. Thus, the early Chief Executives carried away their documents of office, entrusting them to their family, estate executors, and often, to fate. After several decades of the perils of private ownership, many collections of presidential records came to be established within the libraries of state and private universities, state historical societies, and the Library of

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<sup>1</sup> See H. G. Jones, *The Records of a Nation* (New York: Atheneum, 1969), pp. 3-23.

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Congress. However, time levied a price on some caches of such documents before they came to rest in friendly institutions.

As the federal establishment began to grow and to realize increasing responsibility for maintaining or regulating the economic and social affairs of the nation, questions arose as to the propriety and wisdom of neglecting the management and preservation of federal records, including the practice of regarding presidential papers to be personal property to be taken away by the incumbent when he left office. By the 20<sup>th</sup> century, historians had become alarmed that such papers were being accidentally destroyed, lost, and sometimes only selectively released for scrutiny. Archivists lamented omissions in the national governmental record that the situation created. Not only might entire files be carried from the White House, but presidential correspondence might be taken from departmental files. As it applied to federal records, the concept of presidential papers knew no bounds. The situation became particularly acute with the creation of the Executive Office of the President in 1939. Franklin D. Roosevelt (FDR) established a panoply of emergency and wartime agencies within this domain, all of which served the President in immediate and direct capacities and all of which, therefore, could be considered producers of “presidential papers.” The potential loss of the documentary materials of these entities presented both a records management, and an administrative continuity, problem.

## Presidential Libraries

Addressing this situation, FDR sought to return presidential papers to the public realm through a new type of institution — the presidential library. When he advanced this concept in 1938, two prototype libraries were in existence. The Rutherford B. Hayes Memorial Library had been completed in Fremont, Ohio, in 1914.<sup>2</sup> Former President Herbert Hoover had placed his presidential records in a facility he had inaugurated in 1919 to house records deriving from his public service during World War I — the Hoover Library of War, Revolution, and Peace, located on the Stanford University campus.<sup>3</sup> Building upon these models, Roosevelt developed the concept of a federally-maintained presidential library. Electing to locate his presidential library on the grounds of his family home in Hyde Park, NY, FDR approved the creation of a corporation to receive contributions and donations to pay for the construction of an archival edifice to house and preserve such historical materials as he might provide to the corporation or the United States. Chartering legislation for the Roosevelt presidential library was enacted in 1939.<sup>4</sup> The Archivist of the United States, acting on behalf of the federal government, accepted the completed library facility on July 4, 1940.<sup>5</sup>

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<sup>2</sup> The Hayes library is currently maintained jointly by the Hayes family foundation and the State of Ohio; see Thomas A. Smith, “Before Hyde Park: The Rutherford B. Hayes Library,” *American Archivist*, vol. 43, Fall 1980, pp. 485-488.

<sup>3</sup> Paul Dickson, *Think Tanks* (New York: Atheneum, 1971), p. 303; the Hoover presidential papers were subsequently transferred to the Hoover presidential library in West Branch, IA, when that facility came under federal operation in 1964.

<sup>4</sup> 53 Stat. 1062.

<sup>5</sup> Waldo Gifford Leland, “The Creation of the Franklin D. Roosevelt Library: A Personal Narrative,” *American Archivist*, vol. 18, January 1955, pp. 11-29; Donald R. McCoy, “The  
(continued...) ”

The efforts of FDR to create a federally-maintained presidential library were both ad hoc and specific. Nonetheless, his successor, Harry S. Truman, was no less attentive to history and the preservation of his presidential papers for public examination. After his election, Truman saw the 1950 creation of a Missouri corporation to establish a presidential library on his behalf, following the FDR model.<sup>6</sup> While the Truman library corporation was endeavoring to raise funds for the construction of the archival edifice, Congress enacted the Presidential Libraries Act of 1955, which established the basic policy for the creation of all federally-maintained presidential libraries.<sup>7</sup> These include the Herbert Hoover Library, West Branch, IA; Harry S. Truman Library, Independence, MO; Dwight D. Eisenhower Library, Abilene, KS; John F. Kennedy Library, Boston, MA; Lyndon Baines Johnson Library, Austin, TX; Richard M. Nixon Library, Yorba Linda, CA; Gerald R. Ford Library, Ann Arbor, MI; Jimmy Carter Library, Atlanta, GA; Ronald Reagan Library, Simi Valley, CA; George H. W. Bush Library, College Station, TX; and the William J. Clinton Library in Little Rock, AR.<sup>8</sup>

As a consequence of the so-called Watergate incident — the June 17, 1972, burglary at the Democratic National Committee headquarters located in the Watergate office building in Washington, DC — and related matters, the official papers and records of President Richard M. Nixon were placed under federal custody by the Presidential Recordings and Materials Preservation Act of 1974 (PRMPA) to assure their availability to federal prosecutors.<sup>9</sup> The statute required that these materials remain in Washington, DC, under the supervision of the Archivist. Thus, Nixon could neither take his presidential records with him when he left office, nor place them in a presidential library outside the nation's capital. Subsequently, a Nixon library was constructed at the former President's birthplace — Yorba Linda, CA. The completed facility was dedicated in July 1990, but remained under private operation for 17 years, housing Nixon's congressional and vice presidential records and a small collection of copies of his presidential papers.

A provision in the Consolidated Appropriations Act, 2004, amended the PRMPA to allow the Archivist, at a later time, to transfer the Nixon presidential materials to the Nixon library in the event NARA took over its administration. In the event of such a transfer, the federal government would retain custody of the records and materials and responsibility for their public availability.<sup>10</sup> Negotiations with the Nixon library resulted in its transfer to NARA on July 11, 2007. Concurrent with this assumption of Nixon

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<sup>5</sup> (...continued)

Beginnings of the Franklin D. Roosevelt Library,” *Prologue*, vol. 7, Fall 1975, pp. 137-150.

<sup>6</sup> Philip C. Brooks, “The Harry S. Truman Library — Plans and Reality,” *American Archivist*, vol. 25, January 1962, pp. 25-37; David D. Lloyd, “The Harry S. Truman Library,” *American Archivist*, vol. 18, April 1955, pp. 107-110.

<sup>7</sup> 69 Stat. 695.

<sup>8</sup> Access to the websites of any of these presidential libraries may be found at [<http://www.archives.gov/presidential-libraries/>]; addresses and telephone numbers for the libraries may also be found in the *Congressional Directory* at the National Archives entry.

<sup>9</sup> 88 Stat. 1695.

<sup>10</sup> See Section 543 at 118 Stat. 346; George Lardner, Jr., “Nixon Data May Be Calif.-Bound,” *Washington Post*, November 13, 2003, p. A12.

library administration, NARA transferred and made publicly available 78,000 pages of previously restricted Nixon documents and more than 11 hours of taped conversations.<sup>11</sup>

Following the enactment of the PRMPA, Congress developed two other statutes affecting presidential libraries. The first of these, the Presidential Records Act of 1978, carefully defined “presidential records,” and specified that all such materials created on or after January 20, 1981, were subject to its provisions.<sup>12</sup> The new law effectively made official presidential records federal property that was to remain under the custody and control of the Archivist when each incumbent President left the White House. Jimmy Carter was the last occupant of the Oval Office who could freely take away his records.

At about this same time, concern about the increasing cost of providing benefits to the nation’s former Presidents was beginning to build in Congress, and was legislatively manifested initially in March 1980 in proposals to adjust the federal largesse bestowed upon former Presidents and their families. Federally-maintained presidential libraries — particularly their physical size and continued maintenance — were among the perquisites seen to be contributing to the burden of the taxpayers.<sup>13</sup> The 99<sup>th</sup> Congress passed legislation addressing this single area of expense involving former Presidents. The Presidential Libraries Act of 1986 set certain reporting requirements, architectural and design conditions, and fiscal limitations regarding future presidential libraries, including requiring an operating endowment.<sup>14</sup> For example, prior to accepting any gift of land, a facility, or equipment to create a federally-maintained presidential library or making any physical or material change in an existing one, the Archivist must submit a written report to Congress providing certain details, as specified in the statute, about the transaction. The endowment requirement for new presidential libraries — 20% of assessed value — was made applicable “to any President who takes the oath of office as President *for the first time* on or after January 20, 1985.”<sup>15</sup> The George H. W. Bush library became the first such facility to be subject to this reform requirement. Subsequently, the Consolidated Appropriations Act for FY2003 increased the endowment requirement to 40% of assessed value and made it effective “to any President who takes the oath of office as President *for the first time* on or after July 1, 2002.”<sup>16</sup>

Federal experience with the first four presidential libraries — those of Roosevelt, Truman, Hoover, and Eisenhower — established two patterns: the facility was located at what was considered to be the particular President’s hometown (birthplace or principal

<sup>11</sup> Gillian Flaccus, “Federal Archivists Take Control of Nixon Library,” *Washington Post*, July 12, 2007, p. C9; Jennifer harper, “Nixon Papers Released: Presidential Library Opens With ‘True Acceptance’,” *Washington Times*, July 12, 2007, p. A8; Neil A. Lewis, “National Archives Release of 11 Hours of Nixon Tapes,” *New York Times*, July 12, 2007, p. A15.

<sup>12</sup> 92 Stat. 2523.

<sup>13</sup> See U.S. Congress, House Committee on Government Operations, *Presidential Libraries: Unexplored Funding Alternatives*, 97<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 97-732 (Washington: GPO, 1982).

<sup>14</sup> 100 Stat. 495.

<sup>15</sup> 100 Stat. 498 (emphasis added).

<sup>16</sup> 117 Stat. 462 (emphasis added).

residence), and the library building(s), grounds, and holdings were deeded to the federal government for supervision.

Change in, or exception to, this practice occurred with the Johnson presidential library, which was located on the campus of the University of Texas at Austin. Because the university could not legally deed its land to the federal government, the Archivist, to take possession of the facility, relied upon his Presidential Libraries Act authority to “make agreements, upon terms and conditions he considers proper, with a State, political subdivision, university, institution of higher learning, institute, or foundation to use as a Presidential archival depository land, buildings, and equipment of the State, subdivision, university, or other organization, to be made available by it without transfer of title to the United States, and maintain, operate, and protect the depository as a part of the national archives system.”<sup>17</sup> This innovation was used again in the case of the Ford library located on the Ann Arbor campus of the University of Michigan. A separate Ford museum is located in the former President’s hometown of Grand Rapids, MI, but it is not a federally-maintained presidential library.

The Kennedy, Carter, and Reagan presidential libraries are situated in locales in close proximity to respective presidential hometowns. The George H. W. Bush library is located in the former President’s home state on the Texas A&M University campus. In late December 2006, it was reported that Southern Methodist University, located in Dallas, was the lone candidate in exclusive talks for the George W. Bush Library.<sup>18</sup>

In recent years, Congress occasionally has appropriated funds on a one-time basis for construction or other improvements at facilities honoring former Presidents that are not part of the presidential library program administered by the National Archives. These include \$1 million in 1996 for the Calvin Coolidge Memorial Foundation,<sup>19</sup> \$500,000 in 1997 for the Rutherford B. Hayes home,<sup>20</sup> \$3 million in 1999 for the Abraham Lincoln library,<sup>21</sup> and \$365,000 in 2000 for the Ulysses S. Grant boyhood home.<sup>22</sup>

## Establishing a Library

To establish a federally-maintained presidential library in compliance with prevailing law, an incumbent President may informally enter into discussions with family members, close friends, and political associates regarding his wishes in this regard. Some combination of these individuals may create a foundation or other organization of private character to receive contributions and donations to obtain a site and construct an edifice for a presidential library. Because the President is not an official of this organization and due to its private character, the group’s activities are not subject to public scrutiny, nor

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<sup>17</sup> See 44 U.S.C. 2112(a) (1982); 44 U.S.C. 2112(a)(1)(B)(i) (1996).

<sup>18</sup> Anna M. Tinsley and Eva-Marie Ayala, “Bush Library Panel Limits Negotiation to SMU,” *Washington Post*, December 22, 2006, p. A12.

<sup>19</sup> 110 Stat. 3009-258 (appropriation); 110 Stat. 3868 (authorization).

<sup>20</sup> 111 Stat. 1550.

<sup>21</sup> 13 Stat. 1501A-143.

<sup>22</sup> 114 Stat. 930.

is the President subjected to any ethics law requirements as a consequence of its solicitation or receipt of contributions.

When the President leaves office, his official records remain in the custody of the federal government, under the supervision of the Archivist. It is expected that, once the Archivist accepts the archival edifice built in honor of the former President, the official records of the former President will be deposited there. Library staff are Archives employees and, as such, are compensated from funds appropriated for this purpose.

Upon completion of the presidential library facility, constructed in accordance with prescribed architectural and design conditions, arrangements are made by the former President's private foundation to deed it to the federal government, along with an operating endowment. Statutory law provides for the calculation of the amount of the endowment required,<sup>23</sup> and legislative history indicates that "the income to the endowments is intended to offset ... building operations costs and reduce, to the extent of the income, the amount of appropriations required for building operations."<sup>24</sup> Ceremonies for dedicating and deeding the facility are scheduled; the federal government takes possession; and an opening day is set. The former President may or may not maintain offices at his library, and his foundation may or may not sponsor or support activities at the library.

## Legislation

On March 1, 2007, two bills pertaining to presidential libraries were introduced: H.R. 1254 would require any presidential library fund-raising organization to report quarterly on contributors donating \$200 or more during the reporting period, with criminal penalties for breaches of this requirement; H.R. 1255 would revoke E.O. 13233, which allows the incumbent President, as well as former Presidents and Vice Presidents whose records are affected, to withhold from public disclosure the records of recent former Presidents and Vice President or to delay their release indefinitely.<sup>25</sup> Moreover, it would allow the Archivist to reassume control of access to the records of recent former Presidents. Both bills were reported (H.Rept. 110-43, H.Rept. 110-44) on March 8. On March 14, the House approved H.R. 1254 under a suspension of the rules on a 390-34 vote, and passed H.R. 1255 under a suspension of the rules on a 333-93 vote. A companion bill to H.R. 1255 was introduced in the Senate as S. 886 on March 14, 2007, and was reported without amendment on June 20, when it was placed on the legislative calendar.<sup>26</sup> Introduced on April 15, 2008, H.R. 5811 would require greater agency preservation of electronic messages and would expand NARA authority for improved preservation of presidential electronic communiques. Reported (H.Rept. 110-709) on June 11, the bill was passed by the House on July 9 under a suspension of the rules on a 286-137 vote. No further action was taken on either bill during the 110<sup>th</sup> Congress.

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<sup>23</sup> See 44 U.S.C. 2112(g)(3).

<sup>24</sup> U.S. Congress, House Committee on Government Operations, *Reduction of Costs of Presidential Libraries*, report to accompany H.R. 1349, 99<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 99-125 (Washington: GPO, 1985), p. 15.

<sup>25</sup> See 3 C.F.R., 2001 Comp., pp. 815-819.

<sup>26</sup> *Congressional Record*, daily edition, vol. 153, March 14, 2007, pp. S3140-S3141.